IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

F.A.O (MVA) No. 242/2004

Date of decision: 22.7.2008

H.R.T.C. Appellant

Versus

Vijay Kumar and another Respondents

Coram:

The Hon'ble Mr.Justice R.B. Misra.

Whether approved for reporting:

For the Appellant: Mr. Naresh Kumar Thakur, Advocate.

For Respondent No.1: Mr. Ramakant Sharma along with Mr. Malay Kaushal, Advocates.

For Respondent No.2: Ms. Anjana Mahindroo, vice counsel.

R.B. Misra, J.(Oral)

Heard learned counsel for Himachal Road Transport Corporation (in short 'Corporation') and learned counsel for other parties.

The present appeal has been preferred against the order dated 23.4.2004 passed in M.A.C Petition No.61-S/2 of 2001 whereby on 18.6.2001 while driving a vehicle i.e. Canter No. HP-14-5473 from Delhi to Solan on Delhi-Manali Road, Sh. Vijay Kumar, respondent No.1, sustained injury by another vehicle No. HP-33-5420, driven by respondent No.2 Sh. Surinder Singh thereby permanent disability to the extent of 60% was suffered. Respondent No.1 was awarded total compensation of

Rs. 3,25,080/- along with interest at the rate of 9% per annum from the date of filing of the petition till its realization.

It appears that respondent No.1 was owner-cum-driver of Canter No. 14-5473 and was driving the same on 18.6.2001 from Delhi to Solan and on the same night at about 12.30 on reaching near Battipurat, the said canter was overtaken by another vehicle No. HP-33-5420 being driven by Sh. Surinder Singh, rashly and negligently with high speed. Immediately after over taking the Canter, respondent No.2 suddenly applied the brake resulting into damage in the vehicle driven by respondent No.1 Sh. Vijay Kumar, whereby his leg was amputated from the point above the ankle and he was hospitalized for treatment for about two months where he had alleged to have spent lacs of rupees and has spent considerable expenditure on medicines as well as on attendant. Keeping in view the age of 23 years of the victim-respondent no.1 and taking into consideration the claim of monthly income, learned Tribunal has assessed the income of owner-driver/respondent No.1 as Rs. 3000/-, suffering a loss of Rs. 1800/- p.m. income on account of disability, keeping in view the age, multiplier of 14 was applied and loss of the future income to the tune of Rs. 3,02,400/- was assessed. Expenditure on medical treatment as Rs. 47000/-, expenditure on attendant and transportation as Rs. 20,000/-, for pains and suffering as Rs. 35,000/- for loss of amenities of life as Rs. 45,000/- and loss of income including future earning as Rs. 3, 17,400/-. Taking the negligence to the extent of 30% on the part of victim/claimant, the total amount of compensation was awarded to the tune of Rs. 3,23,080/- which was 70% of the total damage of Rs. 4,64,400/-

Learned Tribunal has framed four issues and dealt these on the basis of witnesses presented on behalf of victim as well as by the defence-respondent. Learned Tribunal has relied upon the testimony of victim as PW-1 as well as the testimony of Rajnish Kumar, PW-2, the passenger who also corroborated the version of victim/claimant that the vehicle in question No. HP-33-5420 of HRTC driven by Surinder Singh with high speed over-took the vehicle canter No. HP-14-5473 and due to sudden application of the brake, the vehicle driven by the victim was hit and consequent upon, the victim has sustained injuries and witness No.2 took the injured victim/claimant to the hospital and FIR was lodged. Age of the victim taken as 23 years is undisputed. Sustaining of disability to the extent of 60% of permanent nature is also undisputed and against the claim of victim of earning of one thousand of rupees per day, learned Tribunal in the facts and circumstances indicated his earning as Rs. 3000/- per month keeping in view the facts and circumstances that the canter No. HP-14-5473 was purchased by the victim on loan and the instalment of Rs. 12000/- was being paid per month and after sustaining injury in question, the victim has become disabled and had engaged another driver to ply the vehicle for Rs. 3000/- and Rs. 150-/- per month as daily allowance.

After analysis of the testimony of respondent No.1, the driver of vehicle No. HP-33-5420 and conductor of the said vehicle, learned Tribunal has arrived at its finding that the victim has contributed to the negligence to the extent of 30% and in those circumstances, has awarded compensation to the extent of 70% out of the total awarded compensation of Rs. 4,64,400/-. Learned Tribunal has also arrived on finding that by the said accident, the

victim has suffered 60% permanent disability. On the analysis of the materials on record and evidences and taking into consideration the claim of the victim as well as rival contentions advanced by respondent No.2, issue No.1 was decided in affirmative. Issue No.2 was dealt with and and Rs. 3,25,080/- was awarded as compensation. Issue Nos 3 and 4 were decided in negative.

After hearing learned counsel for the parties, perusal of the documents and after analysis of the testimony, this court also finds that that victim aged about 23 years was rightly assessed to have earning of Rs. 3000/- and Rs. 1800/- PM for suffering loss, 60% disability in view of the medical report and loss of future income of Rs. 3,02,400/- and total pecuniary loss was rightly assessed for Rs. 4,64,400/- learned Tribunal has rightly assessed that the negligence of the victim was to the extent of 30% only and in those circumstances has rightly awarded 70% of the pecuniary damages and has correctly awarded the compensation of Rs. 3,25,080/- with 9 % PA interest from the date of filing of the petition.

After analysis of the material on record, I find no illegality and impropriety in the order passed by the learned Tribunal, therefore, the appeal is dismissed.

In view of the dismissal of the appeal, all pending applications, if any, are also dismissed.

(R. B. Misra), J.

22.7.2008
(sl)